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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>STAYED SUSPENSION</b>			<b>PUBLIC MATTER</b>
Counsel for the State Bar  <b>William Todd</b> <b>Supervising Attorney</b> 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1491  Bar # 259194	Case Number(s): <b>17-O-05682</b>	For Court use only          <div style="text-align: center;"> <p><b>FILED</b> <i>AKG.</i></p> <p><b>JAN 16 2019</b></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>	
Counsel For Respondent  <b>Michael N. Hirota</b> <b>Thompson Coe O'Meara, LLP</b> 12100 Wilshire Blvd., Suite 1200 Los Angeles, CA 90025 (310) 954-2356  Bar # 280466	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">                     kwiktag®                 </div> <div style="margin-right: 10px;">241 071 742</div> </div>	
In the Matter of: <b>MARK DANIEL HOLMES</b>  Bar # 156660  A Member of the State Bar of California (Respondent)			

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 16, 1991**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's membership fees for each of the following years:
- If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
- Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
- Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline:**
- (a)  State Bar Court case # of prior case: **11-O-19301. A true and correct copy of the prior record of discipline is attached hereto as exhibit 1. See page 9.**
- (b)  Date prior discipline effective: **February 7, 2013**
- (c)  Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 3-310(C)(2)**
- (d)  Degree of prior discipline: **Public Reproval with conditions**
- (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.

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- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice. **See page 9.**
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.

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- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Pro Bono Service, see page 9.**

**Prefiling Stipulation, see page 9.**

**D. Recommended Discipline:**

**Stayed Suspension:**

Respondent is suspended from the practice of law for **one year**, the execution of that suspension is stayed, and Respondent is placed on probation for **one year** with the following conditions.

- (1)  **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2)  **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3)  **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

- (4)  **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5)  **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6)  **Quarterly and Final Reports:**
- a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
- b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7)  **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of

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the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

- (8)  **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9)  **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10)  **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11)  **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.
- (12)  **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE \_\_\_\_\_ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13)  **Other:** Respondent must also comply with the following additional conditions of probation:
- (14)  **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent

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sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

(15)  **The following conditions are attached hereto and incorporated:**

- Financial Conditions                       Medical Conditions  
 Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

**E. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1)  **Multistate Professional Responsibility Examination Within One Year:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2)  **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because
- (3)  **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:





## CONCLUSION OF LAW:

10. By acquiring an interest adverse to respondent's client, on May 5, 2016, specifically, an interest in Tasies's real property located in Highland, California, 92346, by executing and recording a Deed of Trust by Tasies to respondent as ("Trustee") and ("Beneficiary") in connection with Tasies's real property without advising Tasies in writing that Tasies may seek the advice of an independent lawyer of Tasies's choice, respondent failed to advise a client in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; respondent willfully violated former Rules of Professional Conduct, rule 3-300.

## AGGRAVATING CIRCUMSTANCES.

**Prior Record of discipline (Std. 1.5 (a)):** Respondent has one prior record of discipline effective February 7, 2013, in case number 11-O-19301. In that matter, respondent stipulated to violating former Rules of Professional Conduct, rule 3-310(C)(2), after accepting representation of two clients in 2010 and continuing into 2011 despite an actual conflict of interest that existed between the clients and without the informed written consent of each client.

Attached as exhibit 1 is a ~~true and correct copy of the prior record of discipline.~~ ~~true and correct copy of the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving filed January 17, 2013~~

## MITIGATING CIRCUMSTANCES.

**Lack of Harm (Std 1.6(c)):** Though respondent held a lien against Tasies's property from May 5, 2016 to March 26, 2018, and though respondent did not comply with former Rules of Professional Conduct, rule 3-300, respondent's lien did not harm Tasies because the property encumbered by the lien was also involved in litigation that spanned the length of the lien. Also, the terms of the transaction were neither unfair nor unreasonable to Tasies, as the lien provided only for an amount sufficient to pay any outstanding legal fees that Tasies herself could not pay, and the lien had no value beyond that amount. Therefore, respondent's misconduct did not harm Tasies.

**Pro Bono Service:** Respondent produced more than 100 examples of pro bono services he provided to clients between 2015 and 2018. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [where pro bono service is a mitigating factor entitled to considerable weight].)

**Prefiling/Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a dispositive, prefiling stipulation as to facts and conclusions of law, thereby preserving State Bar Court time and resources and both acknowledging and accepting responsibility for his misconduct. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit.

IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, the stipulation must explain how it reached the recommendation. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, the public, the legal system or the profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 1.8(a) states that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was so minor that imposing greater discipline would be manifestly unjust. Here, respondent has one prior record of discipline, and that record is not so minor that imposing greater discipline would be manifestly unjust. Thus, the sanction in the present matter must be greater than a public reproof.

In the present matter, Standard 2.4 applies to respondent’s violation of former Rules of Professional Conduct, rule 3-300. Standard 2.4 provides that suspension is the presumed sanction for improperly entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the misconduct and any harm it caused to the client are minimal, in which case reproof is appropriate. If the transaction or acquisition and its terms are unfair or unreasonable to the client, disbarment or actual suspension is appropriate.

In the current matter, respondent failed to obtain Tasies’s signed consent agreeing to the terms of the acquisition of property, and respondent did not advise Tasies in writing that she and her spouse may seek advice of an independent attorney. However, the terms of the transaction were not unfair or unreasonable to Tasies; the lien existed only to resolve unpaid legal bills, and therefore limited respondent’s recovery to costs Tasies actually incurred.

To determine the appropriate level of discipline, we must also consider the aggravating and mitigating circumstances. In mitigation, respondent could be entitled to mitigation if he enters into a stipulation. In aggravation, respondent has one prior record of discipline for a violation of former Rules of Professional Conduct, rule 3-310(C)(2).

In *Connor v. State Bar* (1990) 50 Cal.3d 1047, the Supreme Court held that an attorney whom acquired an adverse interest to a client without advising the client to seek independent counsel warranted public reproof. The attorney represented a client in a pending personal injury claim. The attorney assisted the client in obtaining financing to avoid foreclosure by acquiring full title to the client's property and then obtaining a home equity loan on the property. The attorney provided the loan proceeds, \$55,000 to the client, and received \$4,500 for his role in obtaining the financing. The attorney signed loan documents where he incorrectly indicated that he resided on the property, used the property address as his home address, and indicated that he was renting and buying the property from the client. The attorney did not provide the client a written explanation regarding the business transaction, and failed to advise the client to seek advice of independent counsel, notwithstanding taking full title to the client's property. The court did not find moral turpitude for the misrepresentations on the loan documents. The attorney had no prior record of discipline and had sixteen-years of discipline free practice.

In *Brockway v. State Bar* (1991) 53 Cal.3d 51, the Supreme Court found the attorney misappropriated funds and acquired an adverse interest in a client's property without obtaining the required consents and providing disclosures. The attorney committed two violations of former Rules of Professional Conduct, rules 8-101 (later former Rules of Professional Conduct, rule 4-100) and former Rules of Professional Conduct, rule 5-101 (later former Rules of Professional Conduct, rule 3-300). The attorney misappropriated \$500 of client funds and ignored the client's demand for a return of the money. Additionally, the attorney acquired an interest in the client's house without first disclosing the terms of the transaction in writing, without giving the client reasonable time to consult independent counsel, and without obtaining the client's written consent to the transaction. While the attorney had no prior record of discipline, the attorney acted with indifference when the client demanded her money, failed to respond to client requests that the deed be returned, and did not tell the client that creditors might levy their house. The Supreme Court ordered the attorney suspended for one-year, stayed, with two-years probation and three-months actual suspension.

In *Hawk v. State Bar* (1988) 45 Cal.3d 589, the Supreme Court found the attorney secured payment of fees by acquiring a note secured by a deed of trust in his client's property. The attorney committed a violation of Business and Professions Code, section 6106, by modifying a promissory note without the client's consent, and a violation of former Rules of Professional Conduct, rule 5-101, by failing to disclose the terms of a separate business transaction in writing, failing to give the client an opportunity to discuss the proposed transaction with independent counsel, and failing to provide the client with a copy of the agreement at issue. In aggravation, Hawk had two prior disciplines, misled the client about the amount of time available to meet the obligation secured by the trust, and changed the terms on the agreement from \$15,000 to \$20,000. In mitigation, Hawk presented testimony from character witnesses, The Supreme Court ordered the attorney suspended for four-years, stayed, with four-years probation and six-months actual suspension.

In the present matter, respondent's misconduct is similar to *Connor*. Respondent obtained a deed of trust on his client's property without providing Tasies a written explanation regarding the transaction, and failed to advise Tasies to seek advice of independent counsel, notwithstanding taking title to Tasies's property. Dissimilar to *Connor*, respondent did not engage in misrepresentation, and has a prior record of discipline. Thus, a higher level of discipline than public reproof is appropriate. Additionally, the present matter is distinguishable from *Brockway* because respondent did not misappropriate client funds. Moreover, unlike the attorney in *Hawk*, respondent did not commit an act of moral turpitude pursuant to Business and Professions Code, section 6106. The attorney in *Hawk* had two prior records of discipline resulting in public reproof and a two-month actual suspension. Here, respondent has one

prior level of discipline resulting in a public reproof. Thus, in contrast, respondent's misconduct is less severe and less aggravated in comparison to *Brockway* and *Hawk*, and the levels of discipline in those cases are too severe for the conduct in this matter.

In light of respondent's misconduct, the absence of aggravating factors, the established mitigation and the relevant standards and case law, the misconduct here falls at the low end of the applicable standard. Therefore, the appropriate level of discipline will include a one-year suspension, stayed, and a one-year probation. Respondent must also attend State Bar Ethics School and must pass the Multistate Professional Responsibility Examination. This level of discipline is consistent with the standards, prior cases, and the purposes of discipline, which include protection of the public, the courts, and the legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 14, 2018, discipline costs in this matter are \$3,300. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

#### **EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)


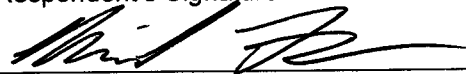
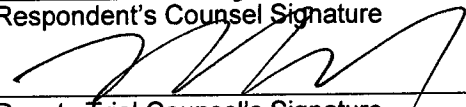
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In the Matter of:  
MARK DANIEL HOLMES

Case Number(s):  
17-O-05682

### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>12-20-18</u>		Mark D. Holmes
Date	Respondent's Signature	Print Name
<u>12-27-18</u>		Michael N. Hirota
Date	Respondent's Counsel Signature	Print Name
<u>12-28-18</u>		William Todd
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of: MARK DANIEL HOLMES	Case Number(s): 17-O-05682
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### ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

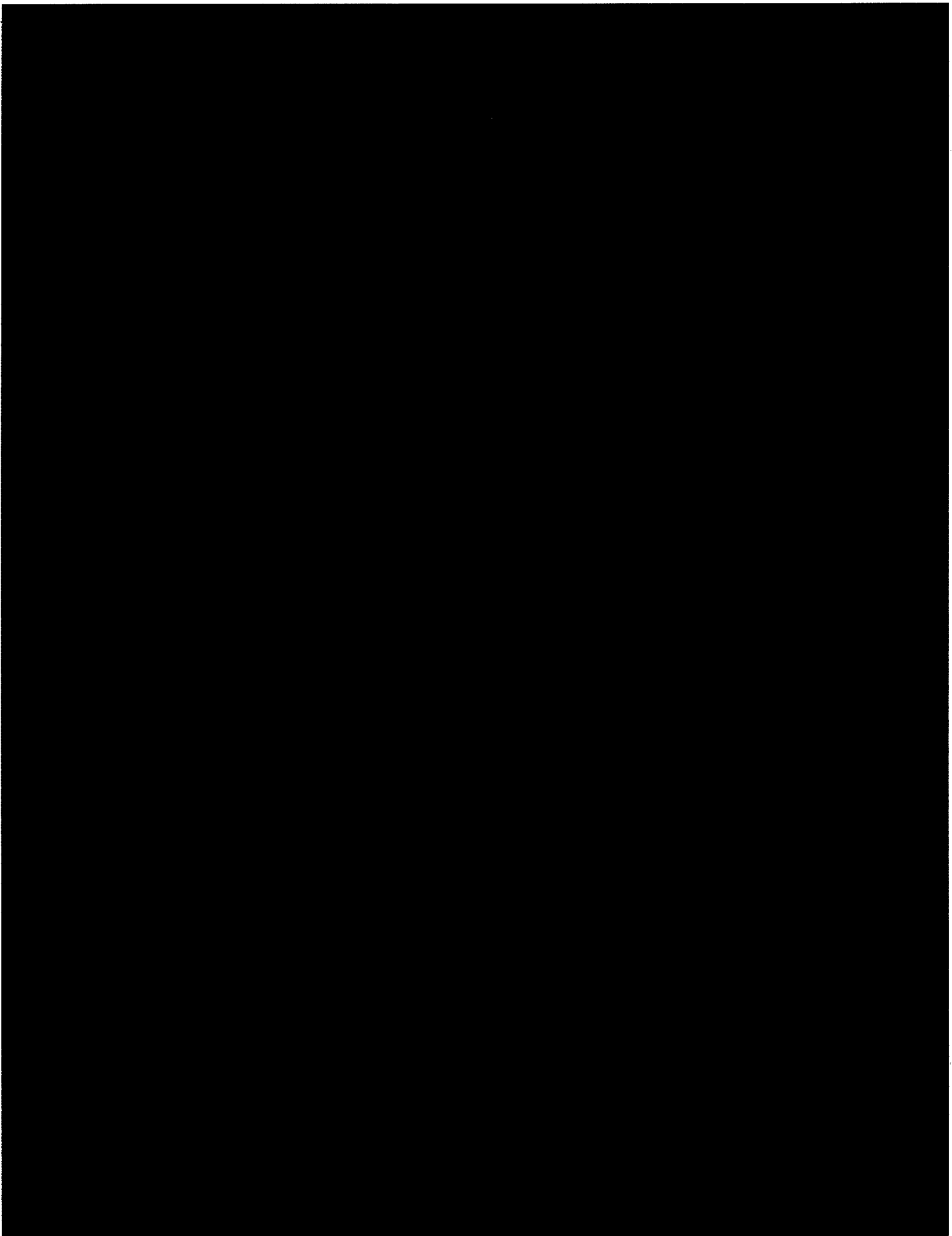
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 12 of the Stipulation, first full paragraph, line 1, "other than a prior public reproof" is inserted after "factors".

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

January 16, 2019  
Date

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
Judge of the State Bar Court



**ORIGINAL**

(Do not write above this line.)

<b>State Bar Court of California Hearing Department Los Angeles REPROVAL</b>		
<b>Counsel For The State Bar</b>  <b>AGUSTIN HERNANDEZ</b> 1149 South Hill St. Los Angeles, CA 90015-2299 (213) 765-1713  Bar # 161625	<b>Case Number(s):</b> 11-O-19301	<b>For Court use only</b>  <div style="text-align: center;"> <b>FILED</b>   <b>JAN 17 2013</b> <i>WA</i>   <b>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</b> </div>
<b>In Pro Per Respondent</b>  <b>MARK DANIEL HOLMES</b> 4 San Joaquin Plaza, Suite 130, Box 12 Newport Beach, CA 92660 (949) 645-0450  Bar # 156660	<b>PUBLIC MATTER</b>	
<b>In the Matter of:</b> <b>MARK DANIEL HOLMES</b>  Bar # 156660  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>PUBLIC REPROVAL</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 16, 1991.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 10 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

*CSA*  
*12/24/12*



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
  - Case ineligible for costs (private reproof).
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  Prior record of discipline [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

(Do not write above this line.)

- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

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- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

See page 7.

**D. Discipline:**

- (1)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  **Public reproof (Check applicable conditions, if any, below)**

**E. Conditions Attached to Reproval:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of one year.
- (2)  During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover

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less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproval.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproval.
- No MPRE recommended. Reason: .
- (11)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

None.



8. At the time Respondent filed the O.A. Counter-Claim against Marciniak, an actual conflict of interest existed between O.A. and Marciniak in this litigation. Thus, Respondent continued representation of more than one client in a matter in which the interest of the clients actually conflicted.

9. At no time did Respondent obtain O.A. or Marciniak's informed written consent to represent them in this matter when an actual conflict of interest existed between them.

10. On September 21, 2011, the court scheduled a hearing for October 24, 2011, on an order to show cause why Respondent should not be disqualified as counsel for O.A. and Marciniak ("OSC"). Respondent received notice of the OSC.

11. On October 24, 2011, the hearing on the OSC was conducted before the Honorable Josephine Staton Tucker ("Judge Tucker"). Respondent appeared at the OSC.

12. On October 25, 2011, Judge Tucker issued an order disqualifying Respondent as counsel for O.A. and Marciniak. Judge Tucker held that Respondent's dual representation of O.A. and Marciniak required automatic disqualification because O.A. and Marciniak's respective interests in this matter were directly adverse to each other.

#### CONCLUSIONS OF LAW:

13. By accepting representation and continuing to represent O.A. and Marciniak when an actual conflict of interest existed between them and without having obtained their informed written consent to represent them, Respondent accepted or continued representation of more than one client in a matter in which the interests of the clients actually conflicted without the informed written consent of each client, Rules of Professional Conduct, rule 3-310(C)(2).

#### ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

##### **No Prior Discipline:**

Though Respondent's misconduct is serious, Respondent has no prior record of discipline in 21 years of practice and is entitled to mitigation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn.13.)

##### **Candor/Cooperation:**

Respondent cooperated with the State Bar in these proceedings to the extent he acknowledged his misconduct and entered into a stipulation of facts, conclusions of law and disposition without the necessity of filing a Notice of Disciplinary Charges or having a trial on this matter. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.)

#### AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline

as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

The sanction applicable to Respondent’s misconduct is found in standard 2.10 which applies to Respondent’s violation of rule 3-310(C)(2), Rules of Professional Conduct.

Standard 2.10 provides that a violation of rule 3-310(C)(2) shall result in reproof or suspension according to the gravity of the offense or the harm. In this matter, Respondent’s misconduct did not result in any harm to his clients.

There are no known cases on point for a single-count violation of rule 3-310(C)(2). However, cases involving attorney misconduct for entering into an improper business transactions with a client can be instructive. While a violation of rule 3-300 is more serious than a violation of rule 3-310, the two are comparable in that they both involve a conflict of interest.

In *Connor v. State Bar* (1990) 50 Cal.3d 1047, the court ordered public reproof for a violation of former rule 5-101 (current rule 3-300) where the attorney essentially purchased his client’s home from him in order to avoid foreclosure, with the promise of selling it back to his client. The attorney failed to provide his client with a separate written explanation regarding the possible ramifications and recommendation to seek independent counsel. The court found that because the client had knowledge of and consented to the attorney’s conduct, there was no intent to deceive or otherwise oppress his client. The attorney had no prior record of discipline in 16 years of practice. The court found that his violation was not typical of his performance as an attorney during his career.

The seriousness of Respondent’s misconduct is similar to the level of seriousness of Connor’s misconduct because they both involve one violation in one client matter and no aggravating circumstances. In the instant matter, Respondent has no prior record of discipline in 21 years of practice. Also like *Connor*, Respondent did not act with deceit or in order to oppress his clients.

Pursuant to Standard 2.10, and considering the absence of aggravating circumstances and mitigated by his 21 years of practice without prior discipline and cooperating with the State Bar by entering into this

stipulation, a public reproof is an appropriate level of discipline to protect the public, the courts and the integrity of the legal profession.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was December 20, 2012.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 20, 2012, the prosecution costs in this matter are \$2,865. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

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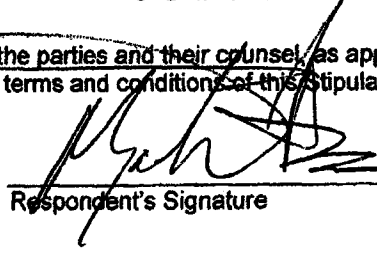
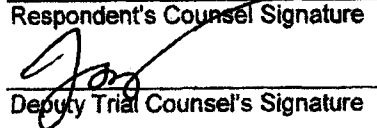
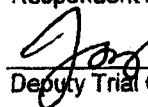


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In the Matter of: MARK DANIEL HOLMES	Case number(s): 11-O-19301
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**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>12-27-12</u> Date	 Respondent's Signature	<u>MARK DANIEL HOLMES</u> Print Name
<u>12/20/12</u> Date	 Respondent's Counsel Signature	<u>AGUSTIN HERNANDEZ</u> Print Name
<u>12/20/12</u> Date	 Deputy Trial Counsel's Signature	<u>AGUSTIN HERNANDEZ</u> Print Name

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In the Matter of: MARK DANIEL HOLMES	Case Number(s): 11-O-19301
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### REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

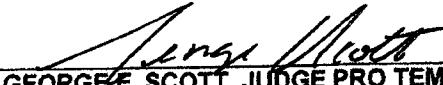
- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

Date

1-11-13

  
GEORGE E. SCOTT, JUDGE PRO TEM  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 17, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

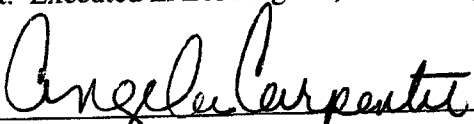
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MARK DANIEL HOLMES  
LAW OFC MARK D HOLMES APC  
4 SAN JOAQUIN PLZ, SUITE 130 BOX 12  
NEWPORT BEACH, CA 92660

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 17, 2013.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST December 4, 2018  
State Bar Court, State Bar of California,  
Los Angeles

By *[Signature]*  
Clerk

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 16, 2019, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER  
APPROVING

in a sealed envelope for collection and mailing on that date as follows:

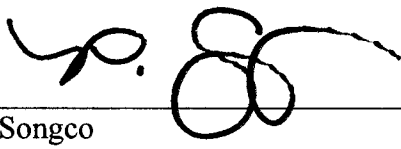
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL N. HIROTA  
THOMPSON COE O'MEARA, LLP  
12100 WILSHIRE BLVD  
STE 1200  
LOS ANGELES, CA 90025 - 7122

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Esther Fallas, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 16, 2019.

  
\_\_\_\_\_  
Paul Songco  
Court Specialist  
State Bar Court